

# EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

## PROJECT TITLE:

Art-List License Agreement  
for the Everett Channel's  
subscription to the Art-List  
Music Licensing Catalog

\_\_\_\_\_ Briefing  
\_\_\_\_\_ Proposed Action  
\_\_\_\_\_ Consent  
\_\_\_\_\_ X Action  
\_\_\_\_\_ First Reading  
\_\_\_\_\_ Second  
\_\_\_\_\_ Reading  
\_\_\_\_\_ Third Reading  
\_\_\_\_\_ Public Hearing

COUNCIL BILL # \_\_\_\_\_

Originating Department Finance/Purchasing

Contact Person Clark Langstraat

Phone Number 425-257-8901

FOR AGENDA OF December 21, 2016

Initialed by:

Department Head \_\_\_\_\_

CAA glo

Council President Am

## Location

Everett Channel

## Preceding Action

## Attachments

License Agreement

## Department(s) Approval

Administration,  
Finance/Purchasing

Amount Budgeted	\$199	
Expenditure Required	\$199	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

## DETAILED SUMMARY STATEMENT:

Art-List provides music licensing for video programming produced by the Everett Channel. A subscription to this service is subject to a license agreement which contains indemnification language.

There is no written agreement for this item. Acceptance and payment are completed online.

## RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor or His Designee to accept the Art-List License Agreement for the Everett Channel's subscription to the Art-List Music Licensing Catalog in the amount of \$199.



# Art-list License Agreement

## 1. **General**

- 1.1. The Agreement herein is made between you and “Art-list” (or by any other name), the owner of the site: [www.Art-list.io](http://www.Art-list.io), and it settles the terms and conditions under which you may receive the right to download works of music included in the Site's Repertoire and use them (hereinafter: Works). The Agreement herein is drafted in the masculine for convenience purposes only and refers to both genders.
- 1.2. You hereby declare and confirm that: (1) you have read the Agreement herein, understood the stated therein and you hereby agree to engage in it; (2) your age does not limit you from lawfully engaging in the Agreement herein and there exists no other legal prevention for your engagement in the Agreement herein; (3) you are authorized to engage in the Agreement herein for yourself, personally, or for the corporation the details of which were specified upon purchase of the license.
- 1.3. You hereby declare and confirm that the Company is the owner of all the rights in the Works, inclusive of all intellectual property rights and all copyrights, and that you do not and will not have any rights whatsoever in the Works, exclusive of the right of use as specified in the Agreement herein.

## 2. **Opening an account**

- 2.1. In order to use the Site's services and receive a license for using the Works as specified in the Agreement herein, you are required to open an account in the Site, provide accurate and full details, and pay for the license. It is forbidden to provide a non-existent email address or an email address which does not belong to you, to impersonate to another person

or body, or to mislead in any other way regarding your identity or your credit card details. The License Agreement herein will come into force upon payment.

- 2.2. You are required to protect the confidentiality and safety of the account details (username and password), and you will bear full and exclusive liability for all activities in your account.
- 2.3. You must inform the Site immediately of any unauthorized use of your account.

### 3. **License to use**

- 3.1. Use of the Site and the Works is subject to the terms of use in the Agreement herein and as may be set from time to time by the Site, and will be done only in accordance with them.
- 3.2. Upon purchase of subscription and subject to fulfillment of all your undertakings according to the Agreement herein you are hereby granted a non-exclusive license (hereinafter: License) to download musical works included in the Site's Repertoire (hereinafter: Works) and to use them for integrating and/or synchronizing them in projects and productions combining sound, text, and images (in any language), such as: video clips and segments, advertisements, presentations, applications, games, animations, slides, multimedia, podcasts, audio-books, softwares, films, series, various programs and so on (hereinafter: Projects). The term Works used in the Agreement herein refers both to the works and to recordings of the works in the Site's Repertoire.
- 3.3. The License includes the right to present and/or play in public and/or distribute the Works being integrated and/or synchronized as part of the Projects, in all existing means of media, inclusive of smart phones, tablets, personal computers, in various internet sites, in social networks, in online stores (such as iTunes), in video sharing sites (such as Vimeo, YouTube and so on), on television and in any other known means, and inclusive of physically by CDs or any other data storage device.

- 3.4. The License gives you the right to make a reasonable use of the Site and the Repertoire in it, and does not limit the number of Projects in which you are entitled to integrate and/or synchronize the Works you download from the Site, in condition the daily number of downloads does not exceed 40 Works. It is hereby clarified that downloading contents from the Site by any automatic means such as software, bots, or any other technical mean will not be considered a reasonable use and is prohibited according to the License conditions.
  - 3.5. The License is personal and non-transferable. Licensee is the person whose name is specified in the License purchase form. To the extent the user is a legal entity which is not a private individual, its name will be specified in the License purchase form and it will be the Licensee.
  - 3.6. The License to Use is non-exclusive and all Works in the Site, inclusive of the Works you use, will be open for the use of others.
  - 3.7. The Site will be entitled to add/remove Works of music from the Repertoire from time to time at its discretion, and you will bear no claim or demand in this regard.
  - 3.8. The Agreement herein is not such as to limit the Company in any manner from selling and/or transferring and/or granting Licenses to use any of the Works, in whole or in part, to third parties, at its discretion.
  - 3.9. The License to Use will be valid for one year from the date of purchase of the subscription (hereinafter: License Term) and it will be automatically renewed every year unless you decide not to renew the subscription. Responsibility for not renewing the subscription is yours and you are required to take the necessary actions in order to not renew your subscription in your PAYPAL account.
4. You are entitled to cancel the subscription within 14 days from the date of its purchase and/or renewal and get a refund. By the end of 14 days from the purchase and/or renewal of the subscription you will not be entitled to cancel the subscription. To the extent you cancel the subscription within 14 days and get a

refund as mentioned, you will be absolutely forbidden from making any use of any of the Works you downloaded from the Site during the 14 days period as from the purchase and/or renewal of the subscription and until the cancellation by you, and any use of any of the Works which were downloaded during that time will be considered a violation of the License and a violation of copyrights. Upon termination of the subscription for any reason whatsoever the Agreement and the License to Use granted by its virtue will also be terminated. Expiration of the License is not such as to derogate from your right to continue and use the Works you downloaded during the time the License was valid, and which you integrated in Projects. **Limitations of Use**

- 4.1. You hereby undertake not to sell and/or transfer and/or share and/or give license to use and/or allow others to record anew and/or present and/or play in public and/or copy and/or distribute in any manner any of the Works in themselves, whether for any consideration or for no consideration. Furthermore, you undertake not to use any of the Works as a separate file and/or to present it as a separate file and/or make it available for download as a separate file or at all, in any manner whatsoever.
- 4.2. You hereby undertake not to make any use of the Works in themselves, but only to integrate or synchronize them as part of the Projects. In any engagement with third parties regarding Projects, you hereby undertake to include an undertaking of the third parties not to use the Works in themselves and to act to the best of your ability to protect the Works from being copied or used in themselves.
- 4.3. You hereby undertake not to use the Works in order to provide service which competes with the Site, such as a music collection, a music library, a data base or in any other manner. Furthermore, you hereby undertake not to store and/or share and/or upload the Works as an independent file to any internet sites and/or to enable access to them by any third parties,

and inclusive of file sharing sites or social networks (such as YouTube, Facebook, Twitter and so on).

- 4.4. You hereby confirm that it is known to you that the License granted to you according to the Agreement herein is non-transferable and it is not possible to grant sub-licenses by its virtue.
- 4.5. You hereby undertake not to claim ownership of any of the Works, inclusive of by YouTube content identification.

## 5. **Forbidden Uses**

- 5.1. It is forbidden to use the Works in any manner which is illegal and/or in any other manner which may damage the artist, the Site's reputation, or third parties, and inclusive of in any manner which violates the rights of third parties.
- 5.2. It is forbidden to use the Works, inclusive of as part of Projects, in context of violence, or encouragement of violence, pornography and abomination, racism, hate and discrimination against any person or based on race, religion, sex, sexual orientation, community or nationality, threats, hurting the helpless, violating privacy, slander and any other insulting contents. The Site reserves its full right to determine at its discretion whether a use of a Work constitutes a violation of this article and you hereby undertake to accept the Site's decision in this matter.
- 5.3. It is forbidden to use the Works in any manner contrary to court orders and/or which was forbidden by the provisions of any law.
- 5.4. It is forbidden to use the Site or the Works in a manner which might damage, block, cause an overload or harm the Site, the communication networks and any communication equipment, or to interrupt any other body's use of the Site. You are not entitled to try and obtain unauthorized access to the Site, the contents, other people's accounts or computer systems or to networks connected to the Site by any means whatsoever.

- 5.5. It is known to you that the Site might demand that you immediately cease using any of the Works in case the Site receives a notice according to which the Work might be violating any third party rights. To the extent you are notified by the Site that it is forbidden to use any of the Works, you hereby undertake to cease using same and to take all the actions required in order to make anyone on your behalf cease the use mentioned.

6. **Exemption from liability**

- 6.1. The Works and the services provided in the Site are provided for use AS-IS and AS-AVAILABLE and you will bear no argument, claim, or demand toward the Site for their suitability for your needs or for their properties.
- 6.2. The Site does not warrant that the Site's services will not be interrupted or will be immune to damage, malfunctions, defects or failures - and all in the hardware, software, communication systems and lines, at the Site or at any of its suppliers.
- 6.3. The Company will bear no liability in case any of the Works is not available in the Site, for any reason whatsoever, during the term of the Agreement.
- 6.4. The Site will bear no liability in any manner to the use of any other additional contents which you may integrate in the Projects and you will solely bear full and exclusive liability for using them.
- 6.5. The Site reserves its right to remove and/or add Works to the Repertoire at any time at its exclusive discretion and you will bear no claims or arguments in this regard.
- 6.6. The Site will bear no liability for any direct or indirect damage, pecuniary or another, which you might incur consequent upon: (1) changes the Site may make to the Services, all or any of them; (2) ceasing, temporarily or permanently, the provision of the Services, all or any of them; (3) changing, adding or removing any of the Services' characters or properties, all or any of them; (4) changing, adding or removing any

contents from the Site and/or recordings or Works from the Repertoire, all or any of them.

7. **Intellectual property rights**

- 7.1. All the information, the Works and contents included in the Site and the services offered therein, inclusive of text, illustrations, graphics, sound, graphic segments, software applications, graphs and photos are protected by copyrights and intellectual property rights of the Site or of other suppliers.
- 7.2. The Agreement herein grants you an authorization to use the Site and the Works in accordance with the provisions of the Agreement herein only and is conditioned by your undertaking not to make or be involved in the making of any activities which breach the Agreement herein, and specifically in activities which cause the violation of intellectual property rights and/or deviation from the provisions of the License.
- 7.3. You are forbidden from using the Site name and trademarks and logos which are in the Site.
- 7.4. You hereby declare and confirm that you do not and will not have any ownership and/or intellectual property rights in the recordings and/or the Works and/or the contents of the Site and/or the Site's trademarks and its design, and that your right is restricted to the limited Right of Use granted to you in the Agreement herein.

8. **Site's rights in case of a violation on your behalf**

- 8.1. You hereby agree that any unauthorized use by you and/or by anyone on your behalf of any of the Works or in a manner deviating from the conditions of the License herein, constitute a breach of the Agreement as well as a violation of the copyright laws, and the Site and anyone on its behalf have the full right to exercise all rights and remedies available to it by law in such case. To the extent the violation is done by a person other



than you but who is under your control, then you are required to take any possible action to immediately cease the violation.

- 8.2. The Site will be entitled, at its exclusive discretion and without any prior notice, to block your access to the Site, temporarily or permanently, in case you violate the law or any of the Site's terms of use, or if there exists any other interruption to the Site's regular activity, and you will bear no claim or demand in this regard.
- 8.3. Without derogating from the above mentioned, to the extent you breach the Agreement herein, the Site will be entitled to disclose your name and details known to it about you in any legal proceeding, even without the awarding or a judicial order so instructing. You hereby undertake to indemnify the Site and anyone on its behalf for any argument, claim, damage, loss, loss of profit, payment or expense it may incur (inclusive of lawyer's fee and legal expenses) due to your breach of the provisions of the Agreement.
- 8.4. The Site reserves the right to disclose personal information about you or about your use of the Site inclusive of the content used without obtaining your permission, if such as act is essential in order to: (1) obey legal requirements or comply with orders issued in a legal proceeding or by a competent authority by any law; (2) enforce the Agreement herein.

## **9. Nature of the engagement**

- 9.1. You hereby confirm and declare that the engagement between you and the Site is an engagement between the provider of a license and a licensee and the parties are not bound in any employee-employer relations and/or in any partnership relations.
- 9.2. You will not be able to cancel the engagement in the Agreement herein and as from the moment of engagement you will not be entitled to any refund whatsoever, unless in accordance with the Site's exclusive discretion.

- 9.3. The Site has the right to change the conditions of the Agreement herein from time to time at its exclusive discretion. Upon making the changes, the new agreement will be published in the Site and a notice will be sent to you. If you do not agree to the changes in the Agreement, you must cease using the Site and downloading Works, for otherwise your continuing the use of the Site and downloading Works will be considered as accepting the changes mentioned and they will apply to you in their entirety.
- 9.4. The Site is entitled to assign and/or transfer and/or deliver its rights and/or its undertakings according to the Agreement herein, in whole or in part, to third parties as it may see fit and at its exclusive discretion, and any transferee as mentioned will be entitled to make a transfer as mentioned to third parties as it may see fit without having to obtain your consent.
- 9.5. Upon termination of the Agreement for any cause whatsoever, the License to Use granted to you by its virtue will expire and you hereby undertake to immediately cease downloading Works and using them.
- 9.6. The Agreement herein forms and summarizes all the provisions agreed between the parties with all that relates thereto and any agreement and/or undertaking and/or declaration not specifically included in the Agreement herein will not be valid. You hereby waive in advance any claim according to which the Agreement was changed and/or amended and/or canceled by conduct or by any correspondence between you and the Company or anyone on its behalf.
- 9.7. You hereby undertake to indemnify the Company for any damage and/or expense it may incur consequent upon any use a Licensee may do of a recording in a manner contradicting the provisions of the Agreement herein.
- 9.8. You bear responsibility for payment of all taxes and expenses applying to you consequent upon the Agreement herein, to the extent such may apply.

- 9.9. If and to the extent any provision of the Agreement herein is decided by court to be illegal or unenforceable, it will not be such as to derogate from the validity of the other provisions of the Agreement herein.
- 9.10. The laws of the State of Israel will exclusively apply to the Agreement herein and the jurisdiction to hear any issue resulting from or regarding the Agreement herein, directly or indirectly, will be given exclusively and uniquely to the Tel-Aviv - Yaffo Court and no other court anywhere else. Without derogating from the above mentioned, the Licensee hereby agrees that the Site will be authorized to act according to judicial orders in any jurisdiction.
- 9.11. You hereby agree that the Site will be able to send you email notices referring to the Site's Services and email messages in various subjects, inclusive of regarding benefits to members of the Site.
- 9.12. The Agreement herein complements the Site's terms of use and is not such as to derogate therefrom. In case of any discrepancy between the Agreement herein and the terms of use in the Site, the provisions of the Agreement herein will prevail.
- 9.13. Notices according to the Agreement herein will be given in writing and delivered by hand or be sent by email according to the email address you specified in the registration form. Any delivery of a notice by email as stated in the article herein will be considered a lawful delivery.



Art-list Team 